

Portugal

COMMERCE AND NAVIGATION

Treaty signed at Lisbon August 26, 1840; related notes dated August 10, 24, 26, and 27, 1840

Entered into force August 26, 1840

Senate advice and consent to ratification February 3, 1841

Ratified by Portugal March 8, 1841

Ratified by the President of the United States April 23, 1841

Ratifications exchanged at Washington April 23, 1841

Proclaimed by the President of the United States April 24, 1841

*Terminated January 31, 1892*¹

8 Stat. 560; Treaty Series 289²

TREATY

In the Name of the Most Holy and Undivided Trinity.

The United States of America, and Her Most Faithful Majesty The Queen of Portugal and of the Algarves, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between Their Respective States; of extending, also, and consolidating the commercial intercourse between them; and convinced that this object cannot better be accomplished than by adopting the systeme of an entire freedom of navigation, and a perfect reciprocity based upon principles of equity equally beneficial to both Countries; have, in consequence, agreed to enter into negotiations for the Conclusion of a Treaty of Commerce and Navigation: and They have appointed as Their Plenipotenciaries for that purpose, to wit: The President of The United States of America, Edward Kavanagh, Their Chargé d'Affaires at the Court of Her Most Faithful Majesty; And Her Most Faithful Majesty, The Most Illustrious and Most Excellent John Baptist de Almeida Garrett, First Historiographer to Her said Majesty, of Her Council, Member of the Cortes, Knight of the ancient and most noble order of the Tower and Sword, Knight Commander of the order of Christ, Officer of

¹ Pursuant to notice of termination given by Portugal Jan. 31, 1891.

² For a detailed study of this treaty, see 4 Miller 295.

the order of Leopold in Belgium, Judge of the Superior Court of Commerce, Envoy Extraordinary and Minister Plenipotentiary to Her Catholic Majesty: Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed upon, and concluded, the following articles.

ARTICLE 1

There shall be, between the Territories of the High Contracting Parties, a reciprocal liberty of Commerce and navigation. The Citizens and Subjects of their respective States shall, mutually, have liberty to enter the Ports, Places and Rivers of the territories of each party, wherever foreign Commerce is, or shall be, permitted. They shall be at liberty to sojourn and reside in all parts of said Territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the Country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.

ARTICLE 2

Vessels of the United States of America arriving, either laden or in ballast, in the Ports of the Kingdom and Possessions of Portugal; and, reciprocally, Portuguese Vessels arriving, either laden or in ballast, in the Ports of the United States of America, shall be treated, on their entrance, during their stay, and at their departure, upon the same footing as national vessels, coming from the same place, with respect to the duties of Tonnage, light-house duties, pilotage, port-charges, as well as to the fees and perquisites of Public Officers, and all other duties and charges, of whatever kind or denomination, levied upon Vessels of Commerce, in the name or to the profit of the Government, the local authorities, or of any public, or private establishment, whatsoever.

ARTICLE 3

No higher or other duties shall be imposed on the importation, into the Kingdom and Possessions of Portugal, of any article, the growth, produce or manufacture of the United States of America; and no higher or other duties shall be imposed on the importation, into the United States of America, of any article, the growth, produce or manufacture of the Kingdom and Possessions of Portugal, than such as are, or shall be, payable on the like article, being the growth, produce, or manufacture of any other foreign Country.

Nor shall any prohibition be imposed on the importation or exportation of any article, the growth, produce or manufacture of the United States of America, or of the Kingdom and Possessions of Portugal, to or from, the Ports of the said Kingdom and Possessions of Portugal, or of the said States, which shall not equally extend to all other foreign Nations.

Nor shall any higher or other duties or charges be imposed, in either of the

two countries, on the exportation of any articles to the United States of America, or to the Kingdom of Portugal, respectively, than such as are payable on the exportation of the like articles to any other foreign Country.

Provided, however, that nothing contained in this Article shall be understood, or intended, to interfere with the stipulation entered into by the United States of America, for a special equivalent, in regard to French wines, in the Convention made by the said States and France, on the fourth day of July, in the year of our Lord one thousand eight hundred and thirty one;³ which stipulation will expire, and cease to have effect, in the month of February, in the year of our Lord one thousand eight hundred and forty two.

ARTICLE 4

The same duties shall be paid, and the same bounties, deductions, or privileges allowed, on the importation, into the Kingdom and Possessions of Portugal, of any article, the growth, produce, or manufacture of the United States of America, whether such importation shall be in Vessels of the said States, or in Portuguese Vessels; and, reciprocally, the same duties shall be paid, and the same bounties, deductions, or privileges allowed, on the importation, into the United States of America, of any article, the growth, produce, or manufacture of the Kingdom and Possessions of Portugal, whether such importation shall be in Portuguese Vessels, or in Vessels of the said States.

ARTICLE 5

It is agreed by the High Contracting Parties, that, whenever there may be lawfully imported into all or any of the Ports of the Kingdom and Possessions of Portugal, in Vessels of any foreign country, articles of the growth, produce, or manufacture of a country other than that to which the importing Vessels shall belong, the same privilege shall immediately become common to Vessels of the United States of America, with all the same rights and favors as may, in that respect, be granted to the most favored nation. And, reciprocally, in consideration thereof, Portuguese Vessels shall, thereafter, enjoy, in the same respect, privileges, rights, and favors, to a correspondent extent, in the Ports of the United States of America.

ARTICLE 6

All kinds of merchandise and articles of Commerce, which may be lawfully exported or reexported from the Ports of either of the High Contracting Parties to any foreign country, in national vessels, may also be exported or reexported therefrom in Vessels of the other Party, respectively, without paying other or higher duties or charges, of whatever kind or denomination, than if the same merchandise or articles of Commerce were exported or reexported in National Vessels.

³ TS 88, *ante*, vol. 7, p. 828, FRANCE.

And the same bounties and drawbacks shall be allowed, whether such exportation or reexportation be made in Vessels of the one Party or the other.

ARTICLE 7

It is expressly understood that nothing contained in this Treaty shall be applicable to the coastwise Navigation of either of the two Countries, which each of the High Contracting Parties reserves exclusively to itself.

ARTICLE 8⁴

It is mutually understood that the foregoing stipulations do not apply to Ports and Territories, in the Kingdom and Possessions of Portugal, where foreign Commerce and Navigation are not admitted; and that the Commerce and Navigation of Portugal, directly to and from the United States of America and the said Ports and Territories, are also prohibited.

But, Her Most Faithful Majesty agrees that, as soon as the said Ports and Territories, or any of them, shall be opened to the Commerce or Navigation of any foreign Nation, they shall, from that moment, be also opened to the Commerce and Navigation of the United States of America, with the same privileges, rights and favors as may be allowed to the most favored Nation, gratuitously, if the concession was gratuitously made, or on allowing the same compensation, or an equivalent, if the concession was conditional.

ARTICLE 9

Whenever the citizens or Subjects of either of the Contracting Parties shall be forced to seek refuge or asylum in any of the Rivers, Bays, Ports, or Territories of the other, with their Vessels, whether Merchant, or of War, through stress of weather, pursuit of Pirates or Enemies, they shall be received and treated with humanity, giving to them all favor, facility and protection for repairing their ships, procuring provisions and placing themselves in a situation to continue their voyage, without obstacle or hindrance of any kind.

ARTICLE 10

The two Contracting Parties shall have the liberty of having, each in the Ports of the other, Consuls, Vice-Consuls, Agents, and Commisaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favored Nation. But, before any Consul, Vice-Consul, Agent, or Commissary shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent.

But, if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private Individuals of their Na-

⁴ For an understanding regarding art. 8, see related notes, pp. 299-303.

tion are submitted, in the same place, in respect of their Commercial transactions.

And, it is hereby declared that, in case of offense against the laws, such Consul, Vice-Consul, Agent or Commissary may either be punished according to law, or be sent back, the offended Government assigning, to the other, reasons for the same.

The archives and papers of the consulates shall be respected inviolably; and, under no pretext whatever, shall any Magistrate seize, or in any way interfere with, them.

The Consuls, Vice-Consuls, and Commercial Agents, shall have the right, as such, to sit as Judges and arbitrators, in such differences as may arise between the Captains and Crews of the Vessels belonging to the Nation whose interests are committed to their charge, without the interference of the local authorities, unless the Conduct of the Crews, or of the Captains, should disturb the order or the tranquillity, or offend the laws, of the Country; or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect, or supported.

It is, however, understood that this species of judgment, or arbitration, shall not deprive the contending parties of the right they have to resort, on their return, to the Judicial Authorities of their country.

ARTICLE 11

The said Consuls, Vice-Consuls and Commercial Agents are authorised to require the assistance of the local authorities, for the search, arrest, detention and imprisonment of the Deserters from the ships of War and Merchant Vessels of their Country.

For this purpose, they shall apply to the competent Tribunals, Judges, and Officers, and shall, in waiting [writing], demand the said Deserters, proving by the exhibition of the Registers of the Vessels, the Rolls of the Crews, or by any other Official Documents, that such Individuals formed part of the Crews; and, this reclamation being thus substantiated, the surrender shall be made, without delay.

Such Deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the Vessels to which they belonged, or sent back to their own country; by a Vessel of the same Nation, or any other Vessel whatsoever.

But, if not sent back within four months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the Deserter shall be found to have committed any crime or offense, the surrender may be delayed until the Tribunal, before which his case shall be pending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE 12

The citizens and Subjects of each of the High Contracting parties shall have power to dispose of their personal goods, within the jurisdiction of the other, by Testament, Donation, or otherwise; and their Representatives shall succeed to their said personal goods, whether by testament or *ab intestato*, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same, at will, paying to the profit of the respective Governments such dues only as the Inhabitants of the country, wherein the said goods are, shall be subject to pay in like cases.

And where, on the death of any person holding real estate, within the Territories of one of the High Contracting Parties, such real estate would, by the laws of the land, descend on a citizen or Subject of the other Party, who, by reason of alienage, may be incapable of holding it, he shall be allowed the time fixed by the laws of the Country; and, in case the Laws of the Country actually in force may not have fixed any such time, he then shall be allowed a reasonable time to sell, or otherwise dispose of, such real estate, and to withdraw and export the proceeds without molestation, and without paying to the profit of the respective Governments any other dues than those to which the Inhabitants of the Country, wherein said real estate is situated, shall be subject to pay in like cases.

ARTICLE 13

If either Party shall, hereafter, grant to any other Nation any particular favor in Navigation or Commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other Nation, or on yielding the same compensation, or an equivalent, *quam proxime* where the grant is conditional.

ARTICLE 14

The United States of America and Her Most Faithful Majesty, desiring to make as durable as circumstances will permit, the relations which are to be established between the two Parties, by virtue of this Treaty or General Convention of reciprocal liberty of Commerce and Navigation, have declared solemnly, and do agree to the following points:

1st

The present Treaty shall be in force for six years from the date hereof, and further until the end of one year after either of the Contracting Parties shall have given notice to the other, of its intention to terminate the same: each of the Contracting Parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the Said term of six years; and it is hereby agreed between them that, on the expiration of one year after such notice shall have been received by either from the other party, this Treaty shall altogether cease and terminate.

2^d

If any one or more of the citizens or Subjects of either Party shall infringe any of the Articles of this Treaty, such citizen or Subject shall be held personally responsible for the same; and the harmony and good correspondence between the two Nations shall not be interrupted thereby; each Party engaging in no way to protect the Offender, or sanction such violation.

3^d

If, (which, indeed, cannot be expected,) unfortunately, any of the articles contained in the present Treaty shall be violated or infringed, in any way whatever, it is expressly stipulated, that neither of the contracting Parties will order or authorise any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said Party, considering itself offended, shall first have presented to the other a statement of such injuries or damages, verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed.

4th

The present Treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of the Said States, and by Her Most Faithful Majesty, with the previous consent of the General Cortes of the Nation, and the ratifications shall be exchanged, in the City of Washington, within eight months from the date hereof, or sooner, if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done in triplicate, in the City of Lisbon, the twenty sixth day of August, in the year of our Lord one thousand eight hundred and forty.

EDWARD KAVANAGH

[SEAL]

JOÃO BAPTISTA DE ALMEIDA GARRETT

[SEAL]

RELATED NOTES

The American Chargé d'Affaires ad interim to the Minister of Foreign Affairs ad interim

LEGATION OF THE
UNITED STATES OF AMERICA
LISBON, August 10, 1840

The undersigned, chargé d'affaires of the United States of America, and their plenipotentiary duly authorized to conclude a treaty of commerce and navigation between the said States and Portugal, has the honor of com-

municating to his excellency the Councillor Rodrigo da Fonseca Magalhães, that questions, arising in the pending negotiations, render it highly material that *the ports and territories of this kingdom, from which foreign commerce and navigation are excluded*, should be designated; the undersigned, therefore, has the honor to request that his excellency will do him the favor to give the desired information.

It has been assumed, by both of the negotiators, that the words "*kingdom and possessions of Portugal*" include every territory and place where Portugal claims or exercises sovereignty and jurisdiction. If this assumption be erroneous, will his excellency have the goodness to correct it?

The undersigned avails himself of this occasion to renew to his excellency assurances of his most distinguished consideration.

EDWARD KAVANAGH

The Minister of Foreign Affairs ad interim to the American Chargé d'Affaires ad interim

[TRANSLATION]

LISBON, August 24, 1840

The undersigned, Plenipotentiary of Her Most Faithful Majesty, has the honor to inform Mr. Edward Kavanagh, Plenipotentiary of the United States of America, that having, according to his promise of yesterday, officially propounded to Her Majesty's Minister and Secretary of State the three points that were necessary to be explained or decided before signing the treaty that was agreed upon yesterday, as well as to render it possible to draft, in a manner satisfactory to both parties, an additional article ⁵ which should be signed simultaneously and as an integral part of the said treaty, has received the following verbal answer, which he is authorized to communicate officially and which he does now communicate to Mr. Kavanagh, declaring at the same time that this, his answer, may be considered by him as having all the force and positive authority which Mr. Kavanagh could desire.

1. As to the declaration of the equivalent mentioned in the eighth article of the treaty, there is no hesitation in declaring that from henceforward it be considered that an equivalent for opening the ports of Her Majesty's ultramarine possessions to the direct commerce and navigation of the United States of America, shall be an equal admission in the United States of the direct commerce and navigation in Portuguese vessels from the said ports.

2. That as to the ultramarine ports which are now considered closed against foreign commerce, Her Majesty's Government judges it necessary

⁵ An additional article relating to Brazil was not agreed.

to proceed to important inquiries before a categorical designation of them; but that a definitive resolution will be necessarily taken very soon, when it will be communicated without delay to the Government of the United States of America.

[Clause 3, relating to a proposed additional article and to a conference to be held the next day, is omitted.]

The undersigned avails himself of this occasion to renew to Mr. Kavanagh assurances of his distinguished consideration and particular esteem.

DE ALMEIDA GARRETT

*The Minister of Foreign Affairs ad interim to the American Chargé
d'Affaires ad interim*

[TRANSLATION]

LISBON, August 26, 1840

The undersigned, Plenipotentiary of Her Most Faithful Majesty, has orders, in the name of Her Most Faithful Majesty, to declare, in the act of signing his name to the Treaty of Commerce and Navigation negotiated with Mr. E. Kavanagh, Plenipotentiary of the United States of America, that there have been long pending between her Government and the Empire of Brazil, negotiations on a treaty of commerce, the result of which may be the concession of mutual favors in the duties of importation at the customhouses of Portugal and Brazil, on certain articles of the production of the two countries, in conformity with the spirit of the reservation made for that purpose in the Treaty of Separation between Portugal and Brazil.^a And this circumstance (of which, from the commencement of the negotiations, the undersigned frankly informed Mr. Kavanagh) being the principal motive that compelled the undersigned to propose that there should be a stipulation (as, in effect, it has been stipulated) for the long period of eight months for the ratification of the present treaty, the Portuguese Government thinks it due to frankness to declare to Mr. E. Kavanagh that, reserving to itself the right of not ratifying the said treaty, if circumstances shall so require, it cannot in such case, if it should so occur, be charged with a want of that good faith of which it has ever given so many proofs.

The undersigned renews on this occasion to Mr. E. Kavanagh assurances of his distinguished consideration and very particular esteem.

DE ALMEIDA GARRETT

TO MR. EDWARD KAVANAGH
etc., etc., etc.

^a Treaty of Aug. 29, 1825; for an English translation, see 12 *British and Foreign State Papers* 674.

*The American Chargé d'Affaires ad interim to the Portuguese
Plenipotentiary*

LISBON, August 26, 1840

The undersigned, plenipotentiary of the United States of America, acknowledges receipt of the note addressed to him this day, in which the Chevalier de Almeida Garrett, plenipotentiary of her Most Faithful Majesty, states that he has orders, in her Majesty's name, to declare, in the act of signing the treaty of commerce and navigation between the said States and Portugal, concluded this day by the respective plenipotentiaries above mentioned, that, in accordance with the spirit of the treaty of separation between Portugal and Brazil, and in pursuance of the reserve therein made, negotiations have been long pending between these two nations, which may result in the concession of mutual favors, in respect to the duties of importation on products of each of the parties in the ports of the other; and that if, circumstances so requiring it, her Majesty's ratification be withheld from the treaty with the United States, this notice is now given, that her Majesty's Government may not hereafter be taxed with want of good faith.

The undersigned, on his part, also declares, in the act of signing the same treaty, that an equal right is also reserved to the Government of the United States of America, if circumstances special to said States shall so require it, to withhold its ratification therefrom.

The undersigned avails himself of this occasion to renew to the Chevalier de Almeida Garrett assurances of his very distinguished consideration.

EDWARD KAVANAGH

*The American Chargé d'Affaires ad interim to the Portuguese
Plenipotentiary*

LISBON, August 26, 1840

The undersigned, plenipotentiary of the United States of America, declares, in the act of signing the treaty concluded this day between the said States and Portugal—

First. That he considers the words "*kingdom and possessions of Portugal*" as comprehending all territories and places wherein her Most Faithful Majesty's Government exercises or claims sovereignty and jurisdiction.

Second. That he accepts the following paragraph, contained in the note addressed to him on the 24th instant, by the Chevalier de Almeida Garrett, as of the same force and effect as if it were inserted, word for word, in the said treaty:

"Quanto á declaração do equivalente mencionado no artigo 8º do tratado, não ha duvida nenhuma em declarar que desde ja fiqué considerado

como o dito equivalente pela abertura dos portos das possessões ultramarinas de sua Magestade ao commercio e navegação directos dos Estados Unidos da America, a admissão a igual commercio e navegação directos dos ditos portos para os dos ditos Estados, em navios Portugueses.”⁷

The undersigned duly appreciates the engagement of her Majesty's Government to communicate to that of the United States its definitive specification of the ports and territories, in the possessions of Portugal, where foreign commerce shall not be permitted.

On this occasion, the undersigned has the honor of tendering to the Chevalier de Almeida Garrett assurances of his distinguished consideration.

EDWARD KAVANAGH

The Minister of Foreign Affairs ad interim to the American Chargé d'Affaires ad interim

[TRANSLATION]

The undersigned, Minister and Secretary of State for the Interior, charged *ad interim* with the Department of Foreign Affairs, in answer to the note addressed to him on the 10th instant by Mr. Edward Kavanagh, Chargé d'Affaires of the United States of America, in which he requested *that the ports and territories of this Kingdom from which foreign commerce is excluded* might be specified, has the honor to inform him that, having sought the necessary information on that point from the Minister of Finance, His Excellency has officially communicated, under this day's date, that in the ports of Lisbon and Oporto all articles of foreign commerce are admitted to entry, for consumption, on complying with the conditions stated in the *pauta geral* (or general tariff) of the customhouses, with the single exception of prohibited articles, such as *cereaes* (breadstuffs), flour, and others; and that in other ports of the Kingdom where there is a customhouse, foreign commerce is also admitted, but entry is not permitted of articles specified in the first article of the preamble to said *pauta* (or tariff).

The undersigned has also the honor of confirming Mr. Kavanagh in his opinion that there is no doubt that by the words "Kingdom and possessions of Portugal" are designated all territories and places over which the Crown of Portugal exercises or claims sovereignty and jurisdiction.

The undersigned improves this occasion to renew to Mr. Kavanagh assurances of his most distinguished consideration.

RODRIGO DA FONSECA MAGALHÃES

OFFICE OF FOREIGN AFFAIRS, August 27, 1840

⁷ For translation, see numbered para. 1 of note of Aug. 24, 1840, p. 300.